

I.

JURISDICTION AND VENUE

1. This action is brought pursuant to Utah Code Ann. § 76-10-911 et seq., (Supp. 1983) (hereinafter referred to as the "Utah Antitrust Act").

2. Jurisdiction in this Court is proper under the Utah Antitrust Act, and the acts and practices complained of occurred principally within Cache County, Utah.

3. Section 76-10-918, Utah Code Ann. empowers the Attorney General to commence this action.

II.

DEFENDANTS

4. Hitachi Sales Corporation of America (hereinafter "Hitachi Corporation") is a California corporation with its principal place of business in Los Angeles, California. Hitachi Corporation is engaged in the business of marketing Hitachi brand consumer electronic products throughout the United States and Utah through various distributors and retailers.

5. Kimball Electronics, Inc. (hereinafter "Kimball Electronics") is a Utah corporation with its principal place of business in Salt Lake City, Utah. Kimball Electronics is engaged in the business of distributing consumer electronic products including, without limitation, Hitachi products, to retailers throughout Utah, Idaho and eastern Nevada.

6. Consumer Technologies, Inc. is a Utah corporation doing business under the trade name Stokes Brothers (hereinafter

"Consumer Technologies") with its principal place of business in Logan, Utah. Consumer Technologies is in the business of retailing consumer electronic products and consumer appliances in the Cache Valley.

III.

CO-CONSPIRATORS

7. Linn Dunn (hereinafter "Dunn") is a resident of Preston, Idaho and was employed by defendant Hitachi Corporation as a district sales manager during all relevant times herein in the district which included Logan, Utah. Defendant Consumer Technologies at all relevant times herein was an account of Dunn's.

8. Richard Savich (hereinafter "Savich") is a resident of Denver, Colorado and was employed as an area sales manager for defendant Hitachi Corporation during all relevant times herein in the area which included Dunn's district.

9. Steven Rogers (hereinafter "Rogers") is a resident of Salt Lake City, Utah and was employed as sales manager by defendant Kimball Electronics during all relevant times herein. Rogers' duties included overseeing sales of Hitachi consumer electronic products to retail dealers in Logan, Utah, among other places.

10. Various other persons and firms, not made defendants herein, participated as co-conspirators in the combinations and conspiracies and performed acts and made statements in furtherance thereof.

11. Whenever in this Complaint reference is made to any act, deed or transaction of a corporation, such allegation shall be deemed to mean that such corporation engaged in such act, deed or transaction by or through its officers, directors, agents, employees or representatives, while they were actively engaged in the management, direction, control or transaction of its business or affairs.

IV.

TRADE AND COMMERCE

12. The Hitachi products referred to hereinafter consist of televisions, radios, video cassette recorders, video cassette cameras, high fidelity record players and all other consumer electronic goods generally sold under the Hitachi brand name.

13. Hitachi consumer electronic products are manufactured in Japan. Defendant Hitachi Corporation imports those products to the United States, directly from the manufacturer, a parent of defendant Hitachi Corporation.

14. The products are often warehoused in southern California and shipped to various distributors and retailers throughout the United States.

15. Defendant Hitachi Corporation markets its products by means of a dual distribution system. Defendant Hitachi Corporation sells Hitachi products both factory-direct to retail dealers and to wholesale distributors who, in turn, sell the Hitachi products to retail dealers.

16. Hitachi products are shipped from California by defendant Hitachi Corporation or its agents to distributors, including defendant Kimball Electronics in Salt Lake City, Utah. Defendant Kimball Electronics in turn sells and/or ships directly to retail dealers of consumer electronic products, including the Hitachi brand. During time periods relevant to this Complaint, defendant Kimball Electronics sold Hitachi consumer electronic products to retail dealers in Cache County, Utah.

17. Defendant Consumer Technologies is among the factory-direct retail dealers to whom defendant Hitachi Corporation sold Hitachi consumer electronic products directly.

V.

VIOLATIONS ALLEGED

COUNT ONE

18. The State of Utah realleges paragraphs 1 through 17 of this Complaint and incorporates them herein by reference.

19. In the Fall of 1986, defendants and their co-conspirators engaged in a combination and conspiracy in unreasonable restraint of trade of the aforesaid trade and commerce in violation of Section Four of the Utah Antitrust Act, Utah Code Ann. § 76-10-914. Said combination and conspiracy may continue unless the relief hereinafter prayed for is granted.

20. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among some or all of the defendants and their co-

conspirators, the substantial terms of which have been to raise, fix and maintain the retail price of Hitachi products.

21. In formulating and effectuating the aforesaid combination and conspiracy, defendants and their co-conspirators did those things which they combined and conspired to do, including among other things:

a) On or about November 16, 1986, an agent of defendant Consumer Technologies, in a telephone call to a competing retailer of consumer electronic products in Logan, Utah, demanded that said retailer raise the price of certain Hitachi products being advertised for sale by said retailer;

b) On or about November 17, 1986, an agent of defendant Consumer Technologies, went to the above-mentioned retailer's store where said agent again demanded that said retailer raise the price of the advertised Hitachi products to the suggested manufacturer's retail price, which the retailer refused to do;

c) Soon thereafter Consumer Technologies' agent spoke with Dunn, who was defendant Consumer Technologies' Hitachi factory salesman, and complained of the below suggested manufacturer's retail price at which the above-mentioned competing retailer was advertising and/or selling Hitachi products in competition with defendant Consumer Technologies;

d) Shortly after the foregoing conversation, at the request of and in concert with Consumer Technologies' agent, Dunn spoke with Rogers to demand that defendant Kimball

Electronics, the Hitachi product supplier of the competing retail dealer, either require the competing retail dealer to increase its prices on Hitachi products to suggested manufacturer retail prices or terminate its supply of Hitachi products;

e) Rogers, on behalf of defendant Kimball, demanded that the competing retailer either raise its retail prices to Hitachi's suggested manufacturer's retail prices or it would terminate its supply of Hitachi products to it;

f) Upon the refusal of the competing retail dealer to raise its retail prices, some or all of defendants and their co-conspirators conspired or otherwise agreed to refuse to deal with said competing retail dealer and defendant Kimball Electronics refused to fill any of the competing retail dealer's orders for Hitachi consumer electronic products causing said retail dealer to be unable to offer Hitachi products to its customers as a direct result of the competing retail dealer's refusal to join in the conspiracy to maintain the retail price to consumers of Hitachi products at the suggested manufacturer's retail price.

22. The aforesaid combination and conspiracy had the following effects, among others:

a) Competition between retail dealers of Hitachi brand consumer electronic products has been restricted, suppressed and restrained;

b) Prices of some of Hitachi consumer electronic products have been fixed, raised, stabilized and maintained at

noncompetitive and artificial levels;

c) Consumer purchasers of Hitachi products have been deprived of the opportunity to purchase those products at competitive levels.

VI.

COUNT TWO

23. The State of Utah realleges paragraphs 1 through 17 of this Complaint and incorporates them herein by reference.

24. Beginning in December of 1985, and continuing to date, defendants Hitachi Corporation and Kimball Electronics and their co-conspirators Savich, Dunn, and Rogers engaged in a combination and conspiracy in unreasonable restraint of the aforesaid trade and commerce in violation of Section 4(1) of the Utah Antitrust Act, Utah Code Ann. § 76-10-914(1). Said combination and conspiracy will continue unless the relief hereinafter prayed for is granted.

25. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendants Hitachi Corporation and Kimball Electronics and their co-conspirators Savich, Dunn, and Rogers, the substantial terms of which have been to raise, fix and maintain the retail price of Hitachi consumer electronic products.

26. In formulating and effectuating the aforesaid combination and conspiracy, defendants Hitachi Corporation and Kimball Electronics and their co-conspirators Savich, Dunn, and

Rogers did those things which they combined and conspired to do, including, among other things:

a) held telephone conferences in which they entered into the aforesaid agreement, combination and conspiracy;

b) held meetings in Salt Lake City, Utah, Las Vegas, Nevada and other locations unknown to plaintiff in which they furthered their efforts to sustain and uphold the aforesaid agreement, combination and conspiracy;

c) threatened and otherwise attempted to pressure and persuade other retail dealers to enter into the aforementioned combination and conspiracy;

d) when a second retail dealer of Hitachi products in Logan, Utah, other than that mentioned in Count One of this Complaint, refused to adhere to pricing levels sought to be achieved by the resale price maintenance conspiracy, the aforementioned defendants and their co-conspirators conspired or otherwise agreed to refuse to deal with said retail dealer and defendant Kimball Electronics refused to fill any of the retail dealer's orders for Hitachi consumer electronic products causing said retail dealer to be unable to offer Hitachi products to its customers.

27. The aforesaid combination and conspiracy had the following effects, among others:

a) Competition between retail dealers of Hitachi consumer electronic products has been restricted, suppressed and restrained;

b) Prices of Hitachi consumer electronic products have been fixed, raised, stabilized and maintained at non-competitive and artificial levels;

c) Consumer purchasers of Hitachi consumer electronic products have been deprived of the opportunity to purchase those products at competitive prices.

VII.

COUNT THREE

28. The State of Utah realleges paragraphs 1 through 17 of this Complaint and incorporates them herein by reference.

29. Beginning in approximately January, 1987 and continuing to date, Dunn, on his own behalf and on behalf of defendant Hitachi Corporation met with Rogers, a representative of defendant Kimball Electronics, and allocated between defendant Kimball Electronics and Dunn, on behalf of defendant Hitachi Corporation, certain sales territories and certain customer accounts in the state of Utah.

30. The aforesaid agreement, combination and conspiracy between defendants Hitachi Corporation and Kimball Electronics is in unreasonable restraint of the aforesaid trade and commerce in violation of Section 4(1) of the Utah Antitrust Act, Utah Code Ann. § 76-10-914(1). Said combination and conspiracy may continue unless the relief hereinafter prayed for is granted.

31. The aforesaid combination and conspiracy had the following effects, among others:

a) Competition between sellers of Hitachi consumer electronic products has been restricted, suppressed and restrained;

b) Prices of Hitachi consumer electronic products have been fixed, raised, stabilized and maintained at non-competitive and artificial levels;

c) Consumer purchasers of Hitachi consumer electronic products have been deprived of the opportunity to purchase those products at competitive prices.

VIII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the State of Utah, prays as follows:

1. That the Court adjudge and decree that the acts of defendants and their co-conspirators constituted a contract, combination and conspiracy to restrain trade in the form of price fixing and illegal territorial and customer account allocations, all in violation of the Utah Antitrust Act, Utah Code Ann. § 76-10-911 et seq.

2. That the defendants, their officers, directors, agents, employees, successors and assigns and all persons acting or claiming to act on their behalf be enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining or renewing the combinations and conspiracies hereinbefore alleged, or from engaging in any other combination, conspiracy, contract, agreement, understanding, or concert of


action having similar purposes or effects, and from adopting or following any practices, plans, programs or devices having similar purposes or effects.

3. That the Court adjudge and decree that the maximum civil penalties allowed by law be paid by each of the defendants pursuant to Utah Code Ann. § 76-10-918 for the continuing and daily violations of the Utah Antitrust Act by each of the defendants.

4. That the Court enter judgment against each defendant in favor of the State of Utah for the costs and attorney's fees incurred in the prosecution of this action, in accordance with Section 9(3) of the Utah Antitrust Act, Utah Code Ann. § 76-10-919(3).

5. For such other and further relief as the Court deems just.

DATED this 23rd day of May, 1988.



DAVID L. WILKINSON
Attorney General
RICHARD M. HAGSTROM
Chief, Antitrust Section
MARK J. GRIFFIN
Assistants Attorney General